Massachusetts Commission Against Discrimination

Annual Report
2001 Decisions

ANNUAL REPORT 2001
DECISIONS

DECISIONS OF A SINGLE COMMISSIONER

MCAD and Berardi v. Medical Weight Loss Center, Inc.
Discrimination on the Basis of Sex, Retaliation and Individual Liability
Complainant, a female and a lesbian exercise physiologist, alleged that a male owner and sole shareholder subjected her to sustained harassment over her sexual orientation, her physical appearance, and the physical appearance of other women, and that Respondent unlawfully retaliated against her for complaining about the harassment. Complainant complained to Respondent concerning his discriminatory remarks about her sex and/or sexual orientation which ultimately led to her termination. Hearing Officer Kenneth B. Grooms found that Respondent's sexually demeaning conduct and repeated making unwelcome and lewd comments created a hostile work environment. Respondent was ordered to pay Complainant $50,000 in emotional distress damages, $45, 581 in lost wages and $350 in medical expenses.

Graves v. Haartz-Mason, Inc.
Discrimination on the Basis of Race
Complainant, an African-American fireman/engineer, alleged that he was terminated because of his race. Hearing Officer Eugenia M. Guastaferri found that Complainant failed to show a prima facie case of racial discrimination or disparate disciplinary treatment. Complainant failed to show that he adequately performed his job duties as a third-shift fireman. Hearing Officer Eugenia M. Guastaferri found Respondent asserted a legitimate non-discriminatory reason, dissatisfaction with Complainant's performance and Complainant's receipt of 10 warnings from the time he was hired to the time he was terminated, and Complainant had not demonstrated pretext. The complaint was dismissed.

Figueroa v. Springfield Transit Management
Discrimination on the Basis of Handicap (Reasonable Accommodation)
Complainant, a bus driver, alleged that Respondent failed to accommodate her handicap (asthma) and then terminated her because of her excessive absenteeism. Complainant also alleged that Respondent discriminated against her on the basis of her sex and national origin but those complaints were dismissed. Hearing Officer Dorca J. Gomez found that Complainant was capable of performing the essential functions of her job as a bus driver with a reasonable accommodation. Respondent made no effort whatsoever to accommodate Complainant's sensitivity to cigarette smoke by either allowing her to avoid the public areas in which cigarette smoke was ever present or restricting the ability of other employees to smoke in these areas. The lack of Respondent's effort to accommodate Complainant resulted in Complainant's extensive absences from work. The Complainant provided to Respondent her doctor's notes specifically stating that the cigarette smoke at work was aggravating her asthma and stating the reasons for her absenteeism. Respondent, however,

made no attempt to discuss these matters with Complainant or to offer Complainant any suggestions. Respondent thereafter reprimanded Complainant and then terminated her for excessive absenteeism.
Respondent was ordered to pay Complainant $20,000 in emotional damages and $17,847 in lost wages.

Tan v. Stonehill College
Discrimination on the Basis of Race and Color
Complainant, the only non-Caucasian (Chinese by birth) tenured full professor of mathematics, alleged that Respondent subjected him to disparate treatment in compensation and that he had been disparately treated in the terms, conditions, and privileges of his employment. Complainant alleged that he was compensated unfairly with his Caucasian comparators and with those "under" him. Complainant's expert witness stated the fact that an assistant professor was paid more than Complainant who was a full professor as "the only situation [I've] ever seen like that in my life…It's completely unheard of." During Complainant's eighth year as a full professor, he was paid less than three associate professors. Hearing Officer Betty E. Waxman found that Complainant timely filed his complaint. Hearing Officer Waxman found that Complainant first learned that he was paid less than lower-ranked professors in March 1995 and timely filed his complaint with the MCAD on April 27, 1995, within the six-month statute of limitations. The Hearing Officer found that Complainant established a prima facie case of discrimination in terms, conditions or privileges of employment on the basis that Respondent disparately treated Complainant from his non-Caucasian colleagues with respect to the financial privileges of seniority, experience and rank. Hearing Officer Waxman found that Complainant was subject to employment discrimination based upon Stonehill College President's memorandum in which he stated that racial stereotyping exists on campus. Respondent was ordered to pay back pay damages in accordance with his rank and within the parameters set out by the Hearing Officer. In addition, Respondent was ordered to pay Complainant $150,000 in emotional damages.

Pires v. Falmouth Police Department
Discrimination on the Basis of Race, Color, National Origin and Retaliation
Complainant, a Cape Verdean Falmouth police officer, alleged that Respondent discriminated against him on the basis of his race, color and national origin (Cape Verdean) because Respondent put Complainant under surveillance and conducted an investigation for suspected alcoholism (suspending him for three days) and neglect of duty; counseled Complainant to undergo counseling; and refused to select him for a motorcycle position. Complainant also alleged that the Falmouth Police Department retaliated against him for Complainant's participation in protected EEO activity. Hearing Officer Kenneth B. Grooms found that Complainant failed to establish a prima facie case in that Complainant was not treated differently from other similarly situated white officers. Hearing Officer Kenneth B. Grooms found that Respondent articulated legitimate, non-discriminatory reasons for its actions. The Complainant failed to establish a prima face case of retaliation. Hearing Officer Kenneth Grooms dismissed the retaliation claim because there was no sufficient evidence that the Police Chief knew of Complainant's protected activity prior to his actions against Complainant. The complaint was dismissed.

Parker v. University of Massachusetts Dartmouth
Discrimination on the Basis of Retaliation
Complainant, a security guard, alleged that he was unlawfully retaliated against when he was demoted and terminated from his position because of his support of an employee who filed an MCAD complaint for race discrimination. Hearing Officer Judith E. Kaplan found that Complainant did establish a prima facie case of retaliatory demotion and termination because shortly after Complainants actions supporting of an employee's MCAD complaint, Complainant was demoted and terminated. Respondent, however, articulated legitimate non-discriminatory reasons for demoting and terminating Complainant. Respondent alleged that they were dissatisfied with Complainant's performance. Respondent had attempted to resolve these problems with the Complainant by meeting with him and by sending Complainant to training school to improve his supervisory skills. The Hearing Officer dismissed Complaint's complaint on the basis that Complainant did not prove that Respondent's actions were a pretext for discrimination.

Carpenter v. Yellow Cab Co.
Discrimination on the Basis of Race and Color
Complainant, a black man, alleged that Respondent discriminated against him on the basis of his race and color in a place of public accommodation by requiring him to prepay for taxi service and refused him taxi service because he is black. Hearing Officer Lindsay Byrne found that Complainant established a prima facie case of unlawful discrimination on the basis of race. Respondent defaulted by not appearing at the hearing and did not offer any legitimate reason for its driver's action. Respondent was ordered to cease and desist immediately from illegal discrimination on any passenger or potential passenger. In addition, Respondent was ordered within 60 days of the final decision to submit to the Commission a plan for training its employees and drivers on nondiscrimination of their customers and to submit to the Commission a workplace policy for responding to and investigating complaints of discrimination from customers. Respondent was also ordered to pay Complainant $3,000 in emotional distress damages.

Wilder v. Diamond Cab Co. and Orlando
Discrimination on the Basis of Race and Color
Complainant, a black woman, alleged that Respondent and one of its drivers, unlawfully discriminated against her in a place of public accommodation on the basis of her race and color when she was required to prepay for her taxi service since "you people don't like to pay" and was refused taxi service for not prepaying the driver. Hearing Officer Lindsay Byrne found that Complainant established a prima facie case of unlawful discrimination on the basis of race. Hearing Officer Lindsay Byrne found that Respondent's proffered reasons that the taxi driver's statement "you people don't like to pay" was not a concern for the driver's safety, as such, the prepayment of Complainant's fare was a pretext for unlawful racial discrimination. Hearing Officer Byrne concluded that Respondent Cab Company did not carry out its duty in protecting its passengers and was ultimately responsible for its driver's act of unlawful discrimination. Respondent Cab Company was ordered to pay Complainant $3,000 in emotional distress damages. Respondent driver was ordered to pay Complainant $500 in emotional distress damages. In addition, Respondent Cab Company

was ordered to cease and desist its illegal discrimination of their customers. Furthermore, within 60 days of the final decision, the cab company was ordered to submit to the Commission a plan for training its employees on non-discrimination and to submit to the Commission a workplace policy regarding how it would conduct and investigate complaints of discrimination by the cab agency employees and drivers.

Hanscom v. Boston Housing Authority and Cunningham
Discrimination on the Basis of Sex (Pregnancy) and Sexual Harassment (Hostile Work Environment)

Complainant, a laborer, alleged that Respondent discriminated against her on the basis of sex/pregnancy discrimination and sexual harassment when her supervisor abused her when he found out that Complainant was pregnant. Complainant alleged that her supervisor singled her out because she was pregnant when he made a comment to her on one workday, "I didn't fuck you and make you this way, so why should I give you any help?" Following this statement, after a co-worker supported Complainant and after an exchange of profanity between Complainant and her supervisor, the supervisor shoved Complainant, lifted her up and flung her down, and Complainant was six months pregnant at the time. Hearing Officer Helene Horn Figman did not find that Respondent's comments and conduct rose to the level of sexual harassment since the comments made by the supervisor, although of a sexual nature, were not sufficiently pervasive to create a sexually hostile work environment. The Hearing Officer, however, ruled in Complainant's favor on her sex/pregnancy claim, since as a result of Respondent's conduct, Complainant suffered embarrassment, humiliation and physical upset. The Hearing Officer found that Respondent did single Complainant out because of her pregnancy. The Hearing Officer declined to award Complainant lost wages because Complainant collected worker's compensation for two years. Respondent was ordered to pay Complainant $35,000 in emotional distress damages.

Yeskevicz v. New Technology Precision, Inc.
Discrimination on the Basis of Sex and Retaliation

Complainant, a female machine-shop employee, alleged that she was the only female working in the machine shop and that Respondent paid her 50 cents an hour less than her two similarly situated male co-workers. Respondent alleged that they were not satisfied with Complainant's work performance because Complainant "overworked" the pieces and many pieces of work that she had done had defects that needed rework. When Respondent felt that Complainant's work did not improve, they gave Complainant "busy work" which included cleaning, sweeping, taking and moving raw materials, etching and driving, and they tried to teach her how to run other machines in hopes that she would improve. Business went down and Respondent laid off Complainant and another co-worker. After Complainant was laid off, Respondent hired the co-worker and hired more male employees at the same base rate that Complainant received from Respondent. Hearing Officer Edward R. Mitnick found that Complainant established a prima facie case of unlawful discrimination for unequal pay. Complainant proved that among the three employees hired by Respondent, Complainant was the only female employee and she was paid a starting wage that was 50 cents an hour less than the starting wage of her male co-workers. The Hearing Officer found that Respondent paid Complainant unequal pay to two similarly situated male employees who held the same position and had the same job as Complainant. The Hearing Officer

found that Respondent articulated a legitimate non-discriminatory reason for the disparate unequal pay of Complainant. Hearing Officer Mitnick agreed with Respondent's reason of paying more to the male co-workers on the basis that they had relevant work experience and longevity with prior employers proving that they would not be brief workers. Respondent argued that Complainant did not have relevant work experience nor did she have longevity with her prior employees, which is why they gave Complainant a lower starting wage than her experienced and loyal male counterparts. Hearing Officer Mitnick, however, found that Complainant did not meet the burden of proving that Respondent's articulated reasons were a pretext for unlawful discrimination. As for the retaliation claim, Hearing Officer Mitnick found that Complainant did establish a prima facie case of retaliation but that Respondent presented legitimate, non-discriminatory reasons for its actions in that they did not rehire former employees. The Hearing Officer found that Complainant failed to demonstrate that the articulated reasons shown by Respondent were a pretext for discrimination and, thus, dismissed the retaliation claim. The complaint was dismissed.

D'Ambrosio v. Massachusetts Bay Transportation Authority
Discrimination on the Basis of Handicap

Complainant, a diabetic employee, alleged that Respondent refused to reasonably accommodate Complainant in order to allow him to work as a motorperson. Complainant alleged that Respondent automatically disqualified him from his position as motorman when he became insulin-dependent. The Complainant's condition forced him to observe a lifestyle that would allow him both to gain weight and to regulate insulin levels. The Commission rejected Respondent's argument that Complainant was not a handicapped person because his condition could be controlled by diet or insulin. The Respondent was aware of Complainant's disability and reassigned him to different positions, including "light duty" positions. However, according to Hearing Officer Eugenia M. Guastaferri, these efforts were insufficient. When Respondent temporarily assigned Complainant to light duty and to the position of guardsman, Respondent did not satisfy their obligations in providing Complainant with reasonable accommodations. The Commission recognized that the Respondent instituted the above job changes in an attempt to accommodate Complainant but faulted the Respondent for repeatedly failing to address the Complainant's fundamental need for a regular schedule. The MCAD guidelines require that there be an "ongoing dialogue" between the employees and the employer in determining what reasonable accommodations are necessary. Hearing Officer Eugenia M. Guastaferri found that Respondent failed to explore with Complainant what his needs were in order for him to satisfactorily perform his job. Each of the Complainant's requests were met with what the Commission found to be dismissive and "cavalier" responses. The Hearing Officer awarded Complainant $75, 000 in emotional distress damages on the grounds that the Complainant suffered physical and psychological stress as a result of the failure to accommodate. The Commission also ordered a comprehensive training program for all supervisors, managers, and medical personnel focusing on the matter of reasonable accommodation and the interactive process required to determine the needs of handicapped employees.

Johnson v. Econolodge of Sturbridge and Crompton
Discrimination on the Basis of Race and Color in Public Accommodation
Complainant, an African-American woman, alleged that Respondent refused a hotel room on the basis of her race. Hearing Officer Judith E. Kaplan found that Respondent asserted a legitimate, nondiscriminatory reason: Complainant and her friends were young, had arrived late at night and the four of them were seeking to rent one room which led to Respondent's suspicion that the room would be let for party. However, the Hearing Officer found that the proffered reasons were merely a pretext for unlawful discrimination. Respondent was ordered to pay Complainant $25,000 in emotional distress damages.

Russell v. Hillcrest Educational Foundation Centers, Inc.
Discrimination on the Basis of Sex and Retaliation
Complainant, a female child-care worker, alleged that Respondent subjected Complainant to unwanted sexual conduct as result of the conduct of an male co-worker, that her supervisor "aided and abetted" the co-worker's conduct and retaliated against Complainant in response to her complaints. Complainant complained about Respondent's transport policies to two co-workers during an authorized trip and made an unauthorized trip while knowing what Respondent's policies were about the transportation of students. Hearing Officer Edward R. Mitnick found that Complainant failed to establish a prima facie case of sexual harassment because Complainant's testimony of her relationship with the co-worker allegedly engaged in misconduct was inconsistent, vague and lacked credibility. In addition, Hearing Officer Mitnick found the co-worker's alleged sexual conduct was not severe and pervasive enough to be actionable under Chapter 151B since Complainant testified that she and the co-worker got along fine and were friendly and they regularly socialized together after work. Complainant never told Respondent that Complainant's co-worker had given her an unwelcome back rub, pulled her pony tail and wrestled with her. As for the retaliation claim, Hearing Officer Mitnick also found that Complainant failed to establish a prima face case of retaliation because Respondent never terminated Complainant's employment. Instead, Respondent attempted to transfer Complainant to another campus. The complaint was dismissed.

Dean v. Massachusetts Turnpike Authority
Discrimination on the Basis of Race
Complainant, a black male toll collector, alleged that Respondent constructively discharged Complainant because of intolerable working conditions created by his supervisor. Complainant had a lengthy disciplinary record while working for Respondent for seven years. Many of Complainant's co-workers and Respondent's employees testified that the supervisor was a "hard ass." The supervisor received many complaints from employees of all races and ethnicities regarding his management style, abruptness and unprofessionalism. Hearing Officer Eugenia M. Guastaferri found overwhelming evidence that Complainant's supervisor brought his tough demeanor, his harshness and condescending manner to all employees no matter what race the employees were. Hearing Officer Guastaferri found that Complainant failed to prove that he was disparately treated and singled out for harsh

treatment and discipline because of his race. Complainant failed to show his working conditions were so intolerable that he had to resign because Complainant failed to seek other employment alternatives prior to his resignation. The complaint was dismissed.

Regan v. Amtrak
Discrimination on the Basis of Race and Retaliation
Complainant, a mechanic for Respondent for over ten years, alleged that Respondent retaliated against him because of his protected activity of advocating for a more diverse workforce. Hearing Officer Betty E. Waxman found that Complainant's poor work ethic and lack of performance led to Respondent's adverse action against Complainant. The complaint was dismissed. Complainant established a prima face case of retaliation while the Respondent articulated legitimate reasons for disciplining Complainant that was unrelated to his protected activity: Complainant's name-calling and threatening behavior towards other employees. Complainant was not able to prove that Respondent's reasons for its employment decision were pretextual. The complaint was dismissed.

Forrest v. Wal-Mart
Discrimination on the Basis of Handicap-Failure to Accommodate
Complainant, a former Wal-Mart sales associate in the shoe department who had a significant hearing impairment and suffered chronic migraine headaches, alleged that Respondent failed to furnish her a reasonable accommodation of providing a telephone amplifier for her hearing impairment; and that Respondent failed to reasonably accommodate her migraine headaches when they terminated her. As a sales associate in the shoe department, her job was to assist customers, put shoes away and occasionally answer the telephone. Because of Complainant's hearing impairment, at times she received assistance in answering the telephone. Complainant alleged that she asked three supervisory personnel to install an amplifier in the telephone, but no telephone amplifier was ever installed during her tenure at Wal-Mart. Complainant sometimes suffered from migraine headaches, which ranged in duration from hours to days and sometimes led her to be incapacitated from work requiring her to lay down in the dark. Respondent knew that Complainant suffered migraine headaches. Prior to the day Complainant was terminated, she was suffering from a migraine headache when a co-worker found Complainant with her head down on the desk in the fitting room. Complainant's supervisor was notified of this and asked Complainant if she needed a break or wanted to go home. Complainant responded that she did not want to go home or take a break but remained at her desk resting which was against store policy. Thereafter, Complainant's supervisor reported to the store manager that he found Complainant with her head down and that it appeared that Complainant was sleeping. Respondent terminated Complainant for sleeping at work. Hearing Officer Lames F. Lamond dismissed Complainant's claim that Wal-Mart failed to accommodate her hearing impairment with a telephone amplifier because Wal-Mart's decision to assign others to assist Complainant in answering the telephone was a reasonable alternative accommodation. Hearing Officer Lamond found that Respondent unlawfully failed to accommodate Complainant's known migraines when it failed to participate in an

interactive process to determine the causal link between Complainant's conduct and her disability (migraine headaches) and that it unlawfully treated Complainant's head-resting as conduct requiring discipline. Respondent was ordered to pay Complainant $20,000 in emotional distress damages and $58,067 in lost wages.

Estabrook v. Massachusetts Bay Transportation Authority
Discrimination on the Basis of Race-Failure to Accommodate
Complainant, a Catholic part-time fare collector, alleged that Respondent unlawfully refused to allow him a personal day on Holy Thursday and an excused absence on Good Friday in 1998. Hearing Officer Kenneth B. Grooms found that Complainant failed to establish a prima facie case of discrimination on the basis of Respondent's failure to accommodate Complainant's religious beliefs and practices because the Complainant failed to prove that his religious beliefs were "sincerely held." The Hearing Officer found that since Complainant worked on the two days that he requested to take off and that he worked on those religious days prior to his request for reasonable accommodation. The complaint was dismissed.

Mindel v. Chelsea Clock Co.
Discrimination on the Basis of Sex and Retaliation
Complainant, a customer service representative for Respondent, alleged that a co-worker sexually harassed her when he whistled at Complainant, jumped out at her, stared at her, asked Complainant to go out with him, and hugged and kissed Complainant; and that Respondent unlawfully retaliated against her by terminating Complainant the day after she complained of the co-worker's sexually harassing conduct. Hearing Officer Judith E. Kaplan dismissed Complainant's sexual harassment claim finding that the co-workers' conduct did not create a hostile work environment nor did it interfere with her ability to perform her job especially since she was not bothered by the co-worker's action of hugging and kissing her and she enjoyed her work. Hearing Officer Kaplan, however, found that Respondent did unlawfully retaliate against Complainant when they fired her the day after she complained about her co-worker's kiss because Respondent's termination of Complainant was in close proximity to Complainant's protected activity of complaining about the co-worker's kiss. The Respondent was ordered to pay Complainant $20,000 in emotional distress damages and $12,620 in lost wages.

Carvalho v. Factory Paint Stores, Inc.
Discrimination on the Basis of Sex
Complainant, an interior design consultant employed by Respondent, alleged that Respondent unlawfully discriminated against her when it terminated her because of her pregnancy. Respondent alleged that it terminated Complainant after she worked there for seven months because there was a decline in business. Complainant was laid off two months prior to her announcement to Respondent that she was pregnant. At the time of Complainant's discharge, Complainant was the least senior employee, her position was never filled and there was indeed a decline in Respondent's business. Complainant failed to meet her burden of showing that Respondent's reasons were pretextual. The complaint was dismissed.

Deeter v. Bravo's Pizzeria and Stathoulopoulos
Discrimination on the Basis of Sex
Complainant, a waitress, alleged that Respondent's owner Anastasios Stathoulopoulos subjected Complainant to unlawful sexual harassment with unwelcome touching and advances such as offering her money to rent an apartment in exchange for sex and promising her a vehicle. On Complainant's last day of work, Anastasios began to compare her body to that of another waitress by lifting up the other waitress's shirt to compare their breasts. In addition, Stathoulopoulos offered her $10,000 for breast implants and said that she would "look great with breast implants." Hearing Officer Edward R. Mitnick found that Stathoulopoulos' verbal and physical conduct regarding Complainant's gender was severe and pervasive enough to interfere with Complainant's job, which in turn led Complainant to leave her job because the working conditions were intolerable. As for the individual liability claim, Hearing Officer Mitnick found that since Stathoulopoulos' was a partial owner, his conduct interfered with Complainant's "exercise and enjoyment of her right to be free of sexual harassment in the workplace." Thus, he was individually and jointly liable with Respondent Bravo's Pizzeria. The Respondent and Stathoulopoulos were ordered to pay Complainant $25,000 in emotional distress damages.

Rushford v. Bravo's Pizzeria and Restaurant
Discrimination on the Basis of Sex and Retaliation
Complainant, a waitress, alleged that Respondent and an employee of Respondent subjected Complainant to unlawful sexual harassment (quid pro quo and hostile environment). Complainant alleged that the restaurant's cook, Shane Brien, made sexually explicit and offensive comments and touched her inappropriately. The owner would regularly request that Complainant go out and entertain his male friends and "show them a good time" while the other owner would inappropriately engage in unwelcome advances and touching when he told Complainant that she was a "beautiful girl" and would try to kiss her on the cheek coupled with advances that he'd promise to buy her a house in exchange for sex.
After working for Respondent for six (6) months, Complainant quit because she could not stand Respondent's sexually harassing conduct. One year after leaving Respondent's workplace, Complainant sought future employment elsewhere. Complainant sought reference from Respondent and someone from Respondent's place of business sent a derogatory and sexually offensive letter of reference to Complainant's future employer. Thus, Complainant alleged that Respondent was retaliating against her for her complaints of sexual harassment.

Hearing Office Edward R. Mitnick concluded that Complainant failed to establish a prima face evidence of quid pro quo sexual harassment but found Respondent liable for hostile environment sexual harassment because both the owner and Shane Brien (Respondent's employee) "engaged in verbal and physical conduct based on Complainant's gender and their behavior was sufficiently severe and pervasive to alter the conditions of Complainant's work environment." In addition, Complainant informed the owners of her complaint and failed to make any remedial action. Hearing Officer Mitnick also found that Complainant was forced to quit her job because of the sexually harassing conduct at work. As to the retaliation claim, Hearing Officer Mitnick found Respondent liable because the letter of reference was "highly derogatory and sexually explicit" which was sent in retaliation for her

complaints of sexual harassment. Hearing Officer Mitnick found Brien not individually liable because Brien did not exercise supervisory authority over Complainant, Complainant failed to submit evidence that Brien was responsible for the derogatory and sexually explicit reference letter showing that he engaged in retaliatory conduct, and Brien's conduct was not "egregious or heinous as to warrant individual liability." Hearing Officer Mitnick declined to award Complainant back pay because Complainant failed to introduce sufficient evidence of the damages she suffered as a result of her constructive discharge. Complainant testified that she suffered severe weight loss, as a result, Respondent was ordered to pay Complainant $25,000 in emotional distress damages.

Gaston v. City of Springfield
Discrimination on the Basis of Handicap and Retaliation
Complainant, a firefighter who suffered from bipolar disorder, alleged that Respondent unlawfully discriminated against him on the basis of his handicap when Respondent subjected him to unequal terms and conditions of employment due to a perceived handicap. Complainant also alleged that Respondent retaliated against him with respect to the terms and conditions of his employment after he filed his complaint with the Commission. Hearing Officer Eugenia M. Guastaferri found that Complainant was a handicapped individual within the meaning of the statute but found that Complainant failed to establish that he was an otherwise qualified handicapped individual capable of performing the essential functions of his job as a firefighter with or without reasonable accommodations. Hearing Officer Guastaferri found that Respondent had legitimate non-discriminatory reasons for placing Complainant on dispatch duty. Hearing Officer Guastaferri found that the Chief's decision to place Complainant on dispatch duty was for the safety of Complainant, other firefighters and members of the general public. In addition, Hearing Officer Guastaferri found that Respondent's actions of disciplining Complainant were not based on Complainant's handicap, rather they were based on Complainant's improper behavior and refusal to obey orders from his supervisor. Respondent's actions were not motivated by retaliatory animus. Complainant failed to establish that Respondent's reasons in removing him from full duty were a pretext for discrimination. The complaint was dismissed.

Fluet v. Harvard University and Harvard University Extension School and Koch
Discrimination on the Basis of Sex, Retaliation
Complainant was a former student in the master's degree program at the Harvard University Extension School where she pursued her concentration in Celtic languages. In 1992, Complainant took undergraduate Celtic courses taught by Koch and enrolled in more of Koch's courses in Celtic languages at the Harvard Extension School. In the fall of 1996, Complainant began working on a book with Koch and he also hired Complainant as a teaching assistant in one of his Celtic courses. During January-March 1997, Koch began e-mailing Complainant numerous messages about his admiration for Complainant, starting off with his admiration for Complainant's intellectual ability to professing his love for Complainant. Complainant became very uncomfortable as Koch progressively commented on Complainant and confided in her that he wanted to marry her. Complainant eventually resigned her position and filed an internal complaint with the Harvard Extension School.

Complainant alleged that Respondents unlawfully discriminated against her based on sex (sexual harassment) and retaliation. On November 14, 1998, all claims against Harvard University and Harvard University Extension School were dismissed. Hearing Officer Kenneth B. Grooms found that Koch's e-mails to Complainant from February 25-Jarch 9, 1997 subjected Complainant to sexual harassment and gender harassment. Hearing Officer Grooms also found the emails from February 25-March 13, 1997 were frequent and sufficiently pervasive to alter the terms of Complainant's employment and created an abusive work environment. Since Koch was the professor in the course for which Complainant served as a teaching assistant, Koch had extraordinary power and influence over Complainant. Hearing Office Grooms found that Complainant failed to establish the retaliation claim because Koch's critical e-mail message did not materially disadvantage Complainant's employment nor was the e-mail message an adverse action against Complainant. In addition, Koch did not know about Complainant's internal complaints when he sent the e-mail to Complainant on February 28, 1997. As to the constructive discharge claim, Hearing Officer Grooms found that even though Koch made Complainant's workplace so intolerable that a reasonable person in her position would have felt compelled to leave, Complainant did not exhaust every reasonable opportunity to continue to work as a teaching assistant at the Harvard Extension School. Complainant resigned before Harvard had an opportunity to investigate her complaint. Koch was ordered to pay Complainant $25,000 in emotional distress damages.

Sparks v. Massachusetts Electric Company
Discrimination on the Basis of Handicap

Complainant, a supervisor of overhead lines, alleged that Respondent unlawfully discriminated against him on the basis of his handicap, alcoholism. Complainant was terminated for committing three serious disciplinary offenses: falsifying company records, lying to a supervisor to obtain permission to leave work early, and being charged with DUI while operating a company vehicle. Hearing Officer Judith E. Kaplan found that Respondent's decision to terminate Complainant was reasonable because Hearing Officer Kaplan concluded that Complainant was not a qualified handicapped person because Complainant committed multiple acts of misconduct. Hearing Officer Kaplan found that Respondent's decision to terminate Complainant was based on his misconduct and not on the cause of his conduct. The complaint was dismissed.

Blake v. Cambridge Public Schools
Discrimination on the Basis of Race, Color and Sex

Complainant, a black female, alleged that Respondent discriminated against her on the basis of race, color and sex because of her treatment as co-principal of Cambridge Rindge and Latin's summer school program as compared to her white male co-principal; her failure to be appointed to the position of cluster-chairperson; and her failure to be appointed to the position of principal of the Cambridge Rindge and Latin evening school. Hearing Officer Betty E. Waxman found that Complainant was not treated differently from other similarly situated persons not of her protected class in her service as co-principal. Hearing Officer Waxman found that Complainant was not qualified enough to be selected to the cluster chairperson position since she lacked experience to perform the key functions of a cluster chairperson. As for the night school principal position, Hearing Officer Waxman found that

Respondent did not assert discriminatory animus when they failed to hire Complainant for the night school principal position because Respondent's failure to select her for the position was simply because Complainant's application was misplaced. The complaint was dismissed.

Valentine v. Life Care Center of Auburn
Discrimination on the Basis of Handicap
Complainant, a nursing assistant hired by Respondent who injured her back while at work, alleged that Respondent unlawfully discriminated against her based on her handicap when it terminated Complainant. When Complainant injured her back, her physician told Complainant that she could re-injure her back if she continued to work as a nursing assistant. Complainant then decided to change careers and enrolled in a medical transcription course. Since Complainant was enrolled in a medical transcription course, she could only work on Fridays, Saturdays, and Sundays in order to attend school. Respondent told Complainant that working on those days was not a promise. Two months later, Complainant reinjured her back while at work. Complainant returned to work with new modifications: work was reduced to four-hour days with limitations on bending and lifting. Complainant missed work five times in one month without notifying Respondent in violation of Respondent's absenteeism policy, which led to Complainant's termination. Hearing Officer Edward R. Mitnick found that Complainant did establish a prima facie case of handicap discrimination, but concluded that Complainant failed to establish that Respondent's true reasons for terminating Complainant were discriminatory. Respondent granted Complainant's request for reasonable accommodation by allowing her to work no longer than four (4) hours per day. Respondent had no duty to grant Complainant's specific request to work only on Fridays, Saturdays, and Sundays because her scheduling request was not based on her handicap but it was based on her desire to attend school. The complaint was dismissed.

Ervin and Massachusetts Commission Against Discrimination v. A.P.T.S., Inc.
Discrimination on the Basis of Handicap
Complainant, a trucker who severely injured her knee while at work, alleged that Respondent unlawfully discriminated against her on the basis of handicap when it terminated Complainant the day after a short absence from a work related injury. Complainant informed Respondent's comptroller that she injured her knee and her physician advised her to take at least two (2) weeks off work. Complainant applied for and received worker's compensation. A week after Complainant's injury, Complainant notified Respondent's president and requested light duty but Respondent's president refused and stated that they did not provide light duty work. Complainant continued to work without restrictions. Respondent's comptroller told Complainant that the president instructed him to terminate Complainant. Hearing Officer Judith E. Kaplan found that Complainant established a prima face case of handicap discrimination. Hearing Officer Kaplan further found that Complainant was terminated for no articulated reason. Respondent failed to appear at the public hearing and a default was entered against it, thus, Complainant won a default judgment for handicap discrimination. Respondent was ordered to pay Complainant $20,000 in emotional distress damages, $9,859.45 in lost wages, and $3,113 in consequential damages for expenses arising from the repossession of her car.

Redfern and Krawczynski v. Saeilo, Inc.
Discrimination on the Basis of Religion and Retaliation
Complainants, two Catholic managers who worked for a precision-products company owned by Reverend Sun Mygung Moon's Unification Church, alleged that Respondent discriminated against Complainants on the basis of religion when they terminated the Complainants. Complainants allege that during business meetings and conferences, often times, Respondent would start with a prayer from the Unification Church and a "Vision" statement, which offended the Complainants. Respondents allege that the "Vision" has both a secular and religious meaning. At one meeting, the corporation's president asked Redfern if he minded a commencement prayer at a semi-annual manager's meeting and Redfern told the president to go ahead and pray. Complainants argued that business and religion should never mix. As to the religious accommodation claim, Hearing Officer Judith E. Kaplan found Respondent did not violate M.G.L. c.151B, Section 4, Paragraph 1(A) because Complainants were not required to violate or forego their sincerely held religious beliefs by attending the seminar. Once Respondent got feedback of the attendees, they abandoned the practice of sponsoring such seminars. As to the religious harassment claim, Hearing Officer Kaplan found that even though on occasion Respondent urged Complainant's to "follow the vision" which offended the Complainants, it did not however, take the form of pervasive conduct that was objectively hostile, intimidating, or humiliating on the basis of religion. Complainant did establish a prima facie case of retaliation (when they objected to the seminar along with continuous discussions of the "vision"), however, subsequent to Complainants' complaints, they received raises and additional benefits. After some time, Respondent terminated Krawczynski and removed Redfern's position because Respondent was dissatisfied with Complainants' performance. Respondent's adverse employment actions were not based on religious discrimination but based on a business decision, thus Respondent did not engage in unlawful retaliation. As to the disparate treatment claim, both Complainants failed to establish a prima face case of disparate treatment. Respondent terminated Complainants due to the declining financial performance of the company for which they were responsible. The complaint was dismissed.

Wald v. ECG Management Consultants et al.
Discrimination on the Basis of Sex
Complainant alleged that Respondent withdrew its offer to hire Complainant upon discovering that she was pregnant. While Complainant, who was pregnant, was interviewed for her job at Respondent on December 18, 1996, she did not raise the issue of when she would be expected to start work if she were to receive an offer. Complainant did not bring up her pregnancy during her interview. On January 20, 1997, Respondent offered Complainant a full-time position, which Complainant immediately accepted and thereafter told Respondent she was pregnant and due on June 28, 1997 (during which there was an important conference that Complainant would be unavailable to attend). Complainant, thereafter, told Respondent that she wanted to start work in December 1997, much later than Respondent anticipated and was unable to commit to that late start date. Hearing Officer Arthur Sherman found that Respondent's reasons for withdrawing its offer was legitimate and not a pretext because of her pregnancy because Complainant was unable to start in the expected time frame, was unavailable to attend an important June conference, and had

conducted herself inappropriately in negotiations surrounding the issue of her start date which caused Respondent to harbor reservations about her ability to function professionally. The complaint was dismissed.

Andrade v. Stop and Shop Supermarket, Inc.
Discrimination on the Basis of Race and Color

Complainant, a Cape Verdean porter, alleged that his supervisor forced him to clean a white employee's sneaker, an act that was demeaning and humiliating to Complainant. In addition, Complainant alleged that co-worker harassment stemming from the sneaker incident created a racially hostile work environment. On the disparate treatment claim, Hearing Officer Eugenia M. Guastaferri found that a similarly situated non-minority employee was not required to perform the task of cleaning a sneaker when he protested. In addition, Officer Guastaferri found that Respondent's extreme persistence despite Complainant's numerous protestations evidenced the stereotypical expectation that Complainant should have complied with Respondent's demands. As to the hostile environment claim, Complainant alleged that the co-worker's constant teasing after the sneaker cleaning incident constituted harassment that led to a hostile work environment. Officer Guastaferri found that Complainant failed in this argument because she found that Respondent exercised reasonable care in preventing additional harassment when after a grievance hearing, Respondent responded by setting up an anti-harassment training for supervisors and asking supervisors to be vigilant to any ongoing harassment. In addition, prior to filing his discrimination complaint, Complainant did not inform Respondent of any ongoing teasing directed at Complainant. Respondent was ordered to pay Complainant $30,000 in emotional distress damages and continue its current practice of conducting anti-discrimination training for its employees.

White and Walker v. Robert A. Koch Industries, McCarthy and Koch
Discrimination on the Basis of Sex and Retaliation

Complainants, former cashiers at a gas station, alleged that Respondents discriminated against them on the basis of sex by creating a hostile work environment and retaliated against them for complaining. White saw her supervisor on a daily basis. White testified that McCarthy would play with her hair and repeatedly rubbed his genital area against her. Hearing Officer Judith E. Kaplan found McCarthy's conduct against White was sufficiently severe and pervasive to alter the conditions of White's work environment. Hearing Officer Kaplan found McCarthy's conduct against White created a hostile work environment and Hearing Officer Kaplan held McCarthy individually and jointly liable with Koch Industries for the unlawful discrimination. Hearing Officer Kaplan found Robert Koch not individually liable to White because White never complained of McCarthy's conduct to him directly or indirectly. Thus, the matter was dismissed against Robert Koch. As to the retaliation claim, Hearing Officer Kaplan found Respondents did not unlawfully retaliate against White for having complained to the owners about sexual harassment. As for Walker's allegations against Respondents, Hearing Officer Kaplan found her allegations to have been illusory, self-serving and greedy therefore; Walker's complaint against Respondents was dismissed. Respondents McCarthy and Koch Industries were ordered to pay White $10,000 in emotional distress damages. White's complaint against Respondent Koch was dismissed.

Scionti v. Eurest Dining Services
Discrimination on the Basis of Race and Color
Complainant, a black commercial kitchen worker, alleged that she was the victim of racial discrimination, which created a hostile work environment that led to her resignation. A co-worker made one racially offensive remark to Complainant at work which she reported to her supervisor. Hearing Officer James F. Lamond found that a single verbal racially hostile comment unaccompanied by physically threatening behavior was not sufficiently severe or pervasive as to alter Complainant's work environment. Moreover, Respondent responded to the incident with prompt and effective remedial action. Complainant also claimed that she was constructively discharged because her working conditions were so intolerable that she was forced to resign. Complainant failed to establish a constructive discharge claim because her hostile work environment claim was unsuccessful. The complaint was dismissed.

Jackson v. City of Worcester and City of Worcester Police Department
Discrimination on the Basis of Handicap and Retaliation
Complainant, a Worcester policewoman who suffered from numerous workplace injuries, alleged discrimination on the basis of her disability or perceived disability when she was not promoted from Police Officer to Police Sergeant. Complainant also alleged that she was retaliated against in the terms and conditions of her employment when she filed her complaint with this Commission. Hearing Officer Betty E. Waxman found that Respondent articulated a legitimate, non-discriminatory reason for bypassing her promotion, supported by evidence of a disciplinary record that included a serious ethical violation for working a second job while Complainant was out on disability leave. As for the retaliation claim, Hearing Officer Waxman found that Complainant failed to establish that she suffered an adverse employment action following the filing of her complaint with this Commission. The complaint was dismissed.

Sampson v. Greycliff Nursing Home
Discrimination on the Basis of Handicap
Complainant, a certified nursing assistant for Respondent, alleged discrimination on the basis of her disability- lower-back pain - in that Respondent failed to reasonably accommodate her condition. Due to Complainant's disability, she was unable to do the excessive bending or heavy lifting which comprised most of her job duties. Hearing Officer Betty E. Waxman found that Complainant was entitled to a light duty assignment because Respondent assigned similar light duty work to other certified nursing assistants. Respondent had a history of assigning light duty work to employees regardless of whether that they were injured on the job or off the job. Complainant requested light duty which Respondent refused to grant her. Hearing Officer Waxman found that assigning light duty work to Complainant would not have created an undue hardship on Respondent and also that Respondant failed to provide a reasonable accommodation. Complainant alleged that she was constructively discharged by Respondent, but Hearing Officer Waxman found that Respondent's constant demands to Complainant to verify her disability, questioning her claim of disability, and closely observing Complainant's work were all legitimate actions of her supervisors and did not rise to the level of hostility as required by a claim of constructive discharge. Respondent was ordered to pay Complainant $1,548 in back pay damages and $10,000 in emotional distress damages.

Nardone v. Massachusetts General Hospital
Discrimination on the Basis of Sex

Complainant, a female cancer-care worker, filed a complaint charging that Respondent discriminated against her on the basis of gender, handicap and retaliation. The Commission dismissed the disability and retaliation claims on the basis that there was no probable cause to support Complainant's allegations; however, the Commission found probable cause on Complainant's gender claim. Complainant alleged that her supervisor (Cassin) made inappropriate and crude comments to Complainant during 1992, 1993 and 1994. From September 1994 to her last day of work on July 31,1995, Complainant had a different supervisor (Woodger) and saw much less of her prior supervisor. Hearing Officer Helen Horn Figman concluded that the interaction between Complainant and Cassin was minimal and did not constitute a continuing violation of the supervisor's discriminatory conduct. Complainant did not report the alleged gender harassment to her superiors nor did she confront her supervisor about the comments made towards Complainant. In fact, Cassin put in a good word in Complainant's evaluation. Complainant filed her claim with this Commission on October 10, 1995. The Hearing Officer Figman found that the supervisor's comment were at times inappropriate and unprofessional, but did not constitute sexual harassment because the supervisor did not deny making the statements and she also made the same statements towards other employees as well. Hearing Officer Figman found that Complainant's supervisor's occasional comments were not sexual in nature and found the remarks were not sufficiently severe and pervasive enough to create a hostile work environment from the viewpoint of a "reasonable person." The complaint was dismissed.

Zereski v. American Postal Worker's Union, Central Massachusetts Local 4553
Discrimination on the Basis of Sex

Complainant, a female secretary for a postal union, alleged that Respondent subjected her to unlawful sexual harassment and failed to take adequate remedial actions to remedy the situation. Prior to working for the Local, the Local's President (Langevin) and other officers kept and maintained a file in an office that contained printed cartoons and jokes which contained profanities or depicted sexually crude situations. When Complainant was hired, she saw the materials in the office and never complained about them to the President. During Langevin's administration, one of the Local's officers would write sexually explicit statements on Complainant's checks. Complainant did not complain about this incident; she did not find the notations on the checks as "too offensive." Furthermore, Complainant and the other officers would continually engage in a friendly banter that would include profanities. When the new administration took over, Complainant began to complain about other incidents with a new officer who used profanities towards Complainant, but there was sufficient evidence that Complainant used profanities, as heard by the new Local President. Throughout Complainant's employment, she encountered boorish, profane, crude and sexually explicit comments and materials, but Complainant's allegations of unlawful sexual harassment were only directed to those who worked under the new administration. Hearing Officer Edward R. Mitnick found that Complainant failed to establish a prima facie case of unlawful hostile work environment sexual harassment because not only did Complainant regularly use profanities in the office (during both administrations), she shared a friendly relationship with the person that she regularly bantered with and Complainant did not find

the comments offensive nor did it interfere with her ability to do her job. Furthermore, Hearing Officer Mitnick found that Complainant's hostility towards the new administration stemmed for her loyalty to the prior administration and that her hostility was not a result from any gender-based verbal conduct. The complaint was dismissed.

Robinson v. Haffner's Service Stations, Inc.
Discrimination on the Basis of Sex

Complainant, a former female cashier for Respondent, alleged that she was subjected to a sexually hostile work environment when one of Respondent's employees repeatedly exposed Complainant to Playboy Magazine and pornographic photos in her work area and she was a victim of a gruesome incident by another of Respondent's employees where she was repeatedly propositioned inside the station. Hearing Officer James F. Lamond found that the sexually graphic materials placed in Complainant's workstation were severe and pervasive which made Complainant become afraid at work, which altered the conditions of her employment. There was no question that the gruesome incident Complainant faced was severe and pervasive but the issue of "numerosity" was raised and Hearing Officer Lamond found the incident to be numerous because Respondent's employee made three separate requests in one incident to Complainant. While Complainant was being propositioned by one of Respondent's employees, another employee was present who had sufficient authority to discipline, but nothing to stop the other employee's behavior. Although the Complainant did not report this incident to management, Respondent was still responsible through the third employee to take prompt and effective remedial action to stop the harassing act towards Complainant and failed to do so. Hearing Officer Lamond ruled the Complainant's decision to resign did not constitute a constructive discharge because the work conditions that existed after the incident did not differ greatly from the working conditions that existed before the incident. Respondent was ordered to pay Complainant $30,000 in emotional distress damages and ordered to publicize an anti-harassment policy and train its employees on discrimination issues involved in the workplace.

Massachusetts Commission Against Discrimination and Williams v. Hardy
Discrimination in Housing

Complainant alleged that Respondent revoked his offer to rent a recently renovated apartment to Complainant when Respondent found out that Complainant was a Section 8 applicant and Respondent did not want to deal with the Section 8 program because it was too frustrating. Hearing Officer Judith E. Kaplan found that Complainant established a prima facie case of housing discrimination on the basis of her Section 8 status. Complainant presented direct evidence when she showed that she is a Section 8 recipient, that she applied to rent a dwelling unit and that she met the objective requirements of the rental because her subsidy allowed her to pay the rent. Furthermore, Complainant proved that Respondent discriminated against her when he initially agreed to rent the apartment to Complainant and signed the necessary documents, but later decided to rent the apartment to someone else who was not a Section 8 recipient. Respondent was ordered to pay Complainant $50,000 in emotional distress damages.

Jones v. Glowacki, Glowacki and Glowacki & Sons, Inc.
Discrimination on the Basis of Race and Color
Complainant, a black male, alleged that Respondent unlawfully discriminated against him on the basis of race and color when Respondent refused to hire Complainant as a truck driver even though the position was available and Complainant was qualified for the position. When Complainant applied for the truck driving position with Respondents, he had a commercial driver's license issued by the Commonwealth, extensive experience as a commercial truck driver and a valid Department of Transportation health card that indicated that Complainant's health was sufficient to allow him to drive trucks. Complainant responded to an ad Respondent put in a newspaper and was told to meet Respondent in Nantucket but Respondent never showed up because of an "emergency". Subsequently, Complainant called numerous times and was told that "nobody" was there. Finally, during one of the phone calls, Complainant asked whether he was not hired because he was black and Respondent answered, "No, we hired 'one of those' last year and he either quit or was fired." Respondent told Complainant that the job was filled but Respondent's ad continued to run in the newspaper. Hearing Officer Betty E. Waxman ruled that Complainant established a prima facie case of racial discrimination and that Respondent failed to rebut the prima facie case with a non-discriminatory reason for not hiring Complainant. Respondents alleged that they tried to call Complainant to offer him the job but there was no evidence of their attempt to call Complainant. Respondent was ordered to pay Complainant $4,340 in back pay damages and $20,000 in emotional distress damages.

Roy v. New England Steak House, Inc. and Quirk
Discrimination on the Basis of Retaliation
Complainant, a waitress for Respondents, alleged that Respondents engaged in unlawful retaliation against Complainant when Complainant witnessed an alleged sexual harassment against a co-worker, supported her co-worker's complaint and was thereafter terminated by Respondent. Hearing Officer Edward R. Mitnick found that Complainant established a prima facie case of unlawful retaliation, but found that Respondent articulated and produced credible evidence that supported their legitimate, nondiscriminatory reason for terminating Complainant. Respondent asserted that Complainant gossiped about the incident to valued customers during work and outside work, which was detrimental to Respondents' business despite the fact that other employees talked freely about the incident but Respondent was not aware of this. The complaint was dismissed.

Cannady v. Shillingford
Discrimination on the Basis of Familial Status in Housing
Complainants, a husband and wife, alleged that Respondent, a realtor, refused to rent an apartment to Complainants with three children, after having left a deposit for first and last months rent and completed a rental application, because the apartment contained lead paint and the property owner did not want to be sued. The unit was rented to tenants with no children. Respondent told the MCAD investigator that the apartment contained lead paint and the landlord did not want to rent the apartment to someone with children. Hearing Officer Judith E. Kaplan found this to constitute direct evidence of discrimination by Respondent and ordered the Respondent to cease and desist from discriminating in housing on the basis of children.

Riggs v. Town of Oak Bluffs and Siple
Discrimination on the Basis of Age and Sex (Gender)
Complainant, an assistant dock master born in June 1931, alleged that Respondent did not select Complainant as marina manager because of her sex, gender, and age. When Complainant applied for the job, she was the only female applicant and the only applicant over the age of forty. At the time she applied, Complainant was sixty-three (63) years old. Prior to applying for the marina manager position, Complainant was involved in the management of the town marina. Because of the problems surrounding the harbor's operation, Complainant wrote bitter letters to the newspaper which were extremely critical of the Board of Selectmen. During the application process, a member from the Harbor Advisory Committee, without authority from the Board of Selectman (who had the sole authority to hire someone for the marina manager position), called Complainant to challenge her resume and threaten her. Complainant was not hired for the position and the position was granted to a younger male. Hearing Officer Eugenia M. Guastaferri ruled that Respondent articulated legitimate, nondiscriminatory reasons for not hiring Complainant, presenting evidence that she was involved in the poor performance and mismanagement of the Harbor one summer, she had continued to support the harbormaster who had mismanaged the harbor operations, and she had publicly criticized the Board of Selectman. The complaint was dismissed as to the Town, but the Hearing Officer Guastaferri found Siple individually liable interfering with Complainant's rights under Chapter 151B.

Worden-Gregoire v. Wal-Mart Stores, Inc.
Discrimination on the Basis of Handicap
Complainant, a stocker with multiple sclerosis, alleged discrimination on the basis of her handicap in that Respondent failed to reasonably accommodate her when it terminated her instead of granting her a leave of absence. Complainant demonstrated that she was a qualified handicapped person and that she required the reasonable accommodation of a leave of absence to treat her condition. Prior to Complainant's termination, the store manager was aware of Complainant's handicap and discussed Complainant's taking a leave of absence as a possible accommodation. Moreover, Respondent did not argue that authorizing Complainant's leave of absence would have been an undue hardship for Respondent. Hearing Officer Judith E. Kaplan ruled that Respondent failed to reasonably accommodate Complainant by terminating her employment because of the uncertainty of Complainant's health rather than assisting Complainant with her leave of absence process. Respondent was ordered to pay Complainant $7,500 in emotional distress damages and to cease and desist its discriminatory practices.